

Remarks

This Amendment for the above-identified patent application is being filed under 37 C.F.R. § 41.33(b).

This patent application is currently on appeal. Jurisdiction of the appeal has not yet passed to the Board. The Applicant filed an Appeal Brief on January 4, 2008. The Examiner responded with an Examiner's Answer mailed April 4, 2008. This Amendment is in response to the Examiner's Answer.

In particular, this Amendment is being filed after the filing of the Applicant's Appeal Brief. Hence, this Amendment is being filed under 37 C.F.R. § 41.33(b). The intent of this Amendment is to rewrite dependent claims into independent form pursuant to 37 C.F.R. § 41.33(b)(2).

Claims 1-28 are currently pending in this patent application. Of claims 1-28, claims 1, 11, and 20 are the only independent claims.

The Examiner rejected claims 1-28 in the final Office Action mailed August 2, 2007 and confirmed the rejection of claims 1-28 in the Advisory Action mailed October 30, 2007. The Applicant's Appeal Brief indicated that claims 1-28 are the subject of the appeal.

Subsequently, in the Examiner's Answer, which was responsive to the Applicant's Appeal Brief, the Examiner indicated that "Claims 4, 14, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims."

Accordingly, the purpose of this Amendment is to amend the claims pursuant to the objection of claims 4, 14, and 22 such that all claims remaining in this patent application upon entry of this Amendment are in a condition for allowance with the appeal being withdrawn.

This Amendment, which is based on the Examiner's indication of claims 4, 14, and 22 being allowable, could not have been filed earlier as the Examiner did not make this indication of allowability until the Examiner's Answer.

As indicated in MPEP § 1206(I), an Amendment filed after the date of filing a Brief pursuant to 37 C.F.R. § 41.37 (e.g., the Applicant's Appeal Brief) "may be admitted only to: (A) cancel claims, where such cancellation does not affect the scope of any other pending claim in the proceeding; or (B) rewrite dependent claims into independent form."

As further indicated in MPEP § 1206(I):

Rewriting dependent claims into independent form as permitted under 37 C.F.R. § 41.33(a)(2) [sic; § 41.33(b)(2)] includes the following situations:

* * *

(B) rewriting an independent claim to incorporate therein all subject matter of a dependent claim, canceling the dependent claim and in conjunction therewith changing the dependency of claims which had depended from the dependent claim being canceled to the amended independent claim that incorporates therein all the subject matter of the now canceled dependent claim.

The claim amendments made herein are in accordance with "(B) rewriting an independent claim . . ."

In particular, claim 4 depends from claim 3 which depends from independent claim 1. The Applicant has amended independent claim 1 to include the limitations of claims 3-4; and has cancelled claims 3-4. The Applicant has amended claims 5-8, which depended from cancelled claim 3, to depend from amended independent claim 1. Claims 2 and 9-10 depend from amended independent claim 1. Thus, claims 1-2 and 5-10 presented herein are in a condition for allowance.

Claim 14 depends from claim 13 which depends from independent claim 11. The Applicant has amended independent claim 11 to include the limitations of claims 13-14; and has cancelled claims 13-14. The Applicant has amended claims 15-17, which depended from claim 13, to depend from amended independent claim 11. Claims 12 and 18-19 depend from amended

independent claim 11. Thus, claims 11-12 and 15-19 presented herein are in a condition for allowance.

Claim 22 depends from independent claim 20. The Applicant has amended independent claim 20 to include the limitations of claim 22; and has cancelled claim 22. Claims 21 and 23-28 depend from amended independent claim 20. Thus, claims 20-21 and 23-28 presented herein are in a condition for allowance.

CONCLUSION

In summary, the Applicant has amended claims 1, 5-8, 11, 15-17, and 20 and has cancelled claims 3-4, 13-14, and 22 in this Amendment. Claims 1-2, 5-12, 15-21, and 23-28 are pending in this patent application upon entry of this Amendment and are in a condition for allowance. Accordingly, such action is respectfully requested with the appeal being withdrawn.

If a conference would expedite allowance or resolve any further questions, such a conference is invited at the convenience of the Examiner.

Respectfully submitted,

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